

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in view of the present amendments and in light of the following discussion, is respectfully requested.

Claims 1, 3-8, 10, 13, 14, 16-23, 25, 26, and 29-34 are pending. Claims 5, 6-8, 10, 13, 14, 16-23, and 25 are withdrawn. In the present amendment, Claims 1, 3, 4, 26, and 29 are amended; Claims 2, 9, 11, 12, 15, 24, 27, and 28 are canceled without prejudice or disclaimer; and new Claims 30-34 are added herewith. Support for the present amendments can be found in the original specification, for example at page 30, lines 2-21, and in original Claims 1, 3, 4, 26, and 29. Thus, it is respectfully submitted that no new matter is added by this amendment.

In the outstanding Office Action, Claims 1, 3, 26, and 29 were rejected under 35 U.S.C. § 112, second paragraph; Claim 29 was rejected under 35 U.S.C. § 101; and Claims 1, 3, 4, 26, and 29 were rejected under 35 U.S.C. § 102(b) as anticipated by Kondo (U.S. Patent No. 5,586,254).

With respect to the rejection under 35 U.S.C. § 112, second paragraph, the claims are amended to correct the informalities noted in the Office Action. It is respectfully submitted that no new matter is added. In view of the present amendments, it is believed that all pending claims are definite and no further rejections on that basis are anticipated. However, if the Examiner disagrees, the Examiner is invited to telephone the undersigned who will be happy to work with the Examiner in a joint effort to derive mutually acceptable language.

With respect to the rejection of Claim 29 under 35 U.S.C. § 101, Claim 29 is directed to a building and recites means-plus-function terminology. Proper claim interpretation of a means-plus-function (35 U.S.C. § 112, sixth paragraph) element entails consideration of the structures disclosed in the specification and equivalents thereof. In determining the scope of

the claims prior to determining compliance with each statutory requirement for patentability, MPEP §2106 provides:

*Office personnel* are to correlate each claim limitation to all portions of the disclosure that describes the claim limitation. This is to be done in all cases, i.e., whether or not the claimed invention is defined using ***means or step plus function language***. The correlation step will ensure that office personnel will correctly interpret each claim limitation. (emphasis added).

Thus, it is respectfully submitted that the rejection under 35 U.S.C. §101 of Claim 29 is improper as this claim clearly recites apparatus claim limitations.

MPEP §2106 further provides that:

*Where means plus function language is used to define the characteristics of a machine or manufacture invention, such language must be interpreted to read on only the structures or materials disclosed in the specification and "equivalents thereof" that correspond to the recited function. Two en banc decisions of the Federal Circuit have made clear that the USPTO is to interpret means plus function language according to 35 U.S.C. §112, sixth paragraph. In re Donaldson, 16 F.3d 1189, 1193, 29 USPQ2d 1845, 1848 (Fed. Cir. 1994) (en banc); In re Alappat, 33 F.3d 1526, 1540, 31 USPQ2d 1545, 1554 (Fed. Cir. 1994) (en banc). (emphasis added)*  
See MPEP § 2106.

The rejection merely includes the conclusory statement “Claim 29 is considered software per se.” Thus, it is respectfully submitted that no express statement has been provided as to how the language of the claims have been interpreted to support the 35 U.S.C. §101 rejection in violation of the guidelines of MPEP §2106.

Accordingly, should such a rejection be maintained in a subsequent communication with respect to any of the aforementioned claims, it is respectfully requested that the Office Action provide an express statement on the record in accordance with MPEP §2106 guidelines explaining how such claim terminology, such as “control means for changing a configuration,” and “acquiring means” is interpreted. More specifically, how the structure identified as corresponding to such limitations is deficient to define a particular machine or apparatus.

Turning now to the rejection under 35 U.S.C. § 102(b) based on Kondo, Applicant respectfully requests reconsideration of this rejection and traverses this rejection, as discussed below.

It is respectfully submitted that the applied art does not disclose or suggest “wherein, based on said status information acquired by said acquiring means, said control means physically deforms a shape of a shape-variable member disposed in said building, or control power supply to an electric socket disposed in said building to physically change said configuration,” as recited in amended Claim 1.

In contrast, Kondo discusses a system for managing and operating a network in which multiple computers and network devices are connected to each other. The system takes measures in case of a fault or failure of the network, including displaying the location of a fault, changing the color of a display, flashing lights on or off, changing the size of the display or changing display symbols.<sup>1</sup> However, it is respectfully submitted that these fault-alert measures of Kondo do not physically deform a shape of a shape-variable member disposed in a building, or control power supply to an electric socket disposed in a building to physically change a configuration, as recited in amended Claim 1. The fault-alert measures of Kondo merely visually change the appearance of a display.

In an exemplary embodiment of the claimed control device, the original specification at page 30, lines 2-21 discusses a doorframe physically changing its shape to be jammed against a door panel in response to current being applied to the doorframe. Accordingly, it is respectfully requested that the rejection of Claim 1, and all claims dependent thereon, as anticipated by Kondo, be withdrawn.

Independent Claims 26 and 29 recite, in part, “physically deforms a shape of a shape-variable member disposed in said building, or controls power supply to an electric socket

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<sup>1</sup> See Kondo, at col. 26, lines 15-18.

disposed in said building to physically change said configuration.” Accordingly, in view of the above discussion with respect to Claim 1, it is respectfully submitted that Kondo does not disclose or suggest every feature recited in amended Claims 26 and 29. Thus, it is respectfully requested that the rejection of Claims 26 and 29, and all claims dependent thereon, as anticipated by Kondo be withdrawn.

New Claims 30-34 are added by the present amendment. Support for new Claims 30 and 31 can be found in the original specification, for example, in original Claims 1, 3, 4, 26, and 29. Thus, it is respectfully submitted that no new matter is added. New Claims 30-34 depend on Claims 1, 26, and 29, and are patentable for at least the reasons discussed above with respect to Claim 1, 26, and 29. Thus, it is respectfully requested that Claims 30-34 be allowed.

Accordingly, withdrawal of the rejection under 35 U.S.C. § 102(b) based on Kondo is respectfully requested.

Consequently, in view of the present amendment, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. A Notice of Allowance is earnestly solicited.

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Reply to Office Action of April 2, 2009

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicant's undersigned representative at the below listed telephone number.

Respectfully submitted,

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